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HOUSE BILL 556

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

BOBBIE K. MALLORY

AN ACT

RELATING TO CRIMINAL SENTENCING; PROVIDING THAT A MAJORITY OF JURORS IN A CAPITAL FELONY PROCEEDING MAY SENTENCE THE DEFENDANT TO DEATH; PROVIDING ADDITIONAL AGGRAVATING CIRCUMSTANCES FOR CONSIDERATION IN CAPITAL FELONY PROCEEDINGS; AMENDING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 31-20A-3 NMSA 1978 (being Laws 1979, Chapter 150, Section 4) is amended to read:

"31-20A-3. COURT SENTENCING. -- In a jury sentencing proceeding in which a majority of the jury [~~unanimously~~] finds beyond a reasonable doubt and specifies at least one of the aggravating circumstances enumerated in Section [~~6 of this act~~] 31-20A-5 NMSA 1978, and [~~unanimously~~] by a majority specifies the sentence of death pursuant to Section [~~3 of this act~~]

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1 31-20A-2 NMSA 1978, the court shall sentence the defendant to
2 death. Where a sentence of death is not [~~unanimously~~] specified
3 by a majority, or the jury does not make the required finding,
4 or the jury is unable to reach a [~~unanimous~~] majority verdict,
5 the court shall sentence the defendant to life imprisonment. In
6 a nonjury sentencing proceeding and in cases involving a plea of
7 guilty, where no jury has been demanded, the judge shall
8 determine and impose the sentence, but he shall not impose the
9 sentence of death except upon a finding beyond a reasonable
10 doubt and specification of at least one of the aggravating
11 circumstances enumerated in Section [~~6 of this act~~] 31-20A-5
12 NMSA 1978. "

13 Section 2. Section 31-20A-4 NMSA 1978 (being Laws 1979,
14 Chapter 150, Section 5) is amended to read:

15 "31-20A-4. REVIEW OF JUDGMENT AND SENTENCE. --

16 A. The judgment of conviction and sentence of death
17 shall be automatically reviewed by the supreme court of the
18 state of New Mexico and disposition shall be rendered within two
19 years of the filing of the notice of appeal.

20 B. In addition to the other matters on appeal, the
21 supreme court shall rule on the validity of the death sentence.

22 C. The death penalty shall not be imposed if:

23 (1) the evidence does not support the finding
24 of a statutory aggravating circumstance;

25 (2) the evidence supports a finding that the

1 mitigating circumstances outweigh the aggravating circumstances;

2 (3) the sentence of death was imposed under the
3 influence of passion, prejudice or any other arbitrary factor;
4 or

5 (4) the sentence of death is excessive or
6 disproportionate to the penalty imposed in similar cases,
7 considering both the crime and the defendant.

8 D. No error in the sentencing proceeding shall
9 result in the reversal of the conviction of a capital felony.
10 If the trial court is reversed on appeal because of error only
11 in the sentencing proceeding, the supreme court shall remand
12 solely for a new sentencing proceeding. The new sentencing
13 proceeding ordered and mandated shall apply only to the issue of
14 punishment.

15 E. In cases of remand for a new sentencing
16 proceeding, all exhibits and a transcript of all testimony and
17 other evidence admitted in the prior trial and sentencing
18 proceeding shall be admissible in the new sentencing proceeding,
19 and:

20 (1) if the sentencing proceeding was before a
21 jury, a new jury shall be impaneled for the new sentencing
22 proceeding;

23 (2) if the sentencing proceeding was before a
24 judge, the original trial judge shall conduct the new sentencing
25 proceeding; or

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1 (3) if the sentencing proceeding was before a
2 judge and the original trial judge is unable or unavailable to
3 conduct a new sentencing proceeding, then another judge shall be
4 designated to conduct the new sentencing proceeding, and the
5 parties are entitled to disqualify the new judge on the grounds
6 set forth in Section 38-3-9 NMSA 1978 before the newly
7 designated judge exercises any discretion. "

8 Section 3. Section 31-20A-5 NMSA 1978 (being Laws 1979,
9 Chapter 150, Section 6, as amended) is amended to read:

10 "31-20A-5. AGGRAVATING CIRCUMSTANCES. -- The aggravating
11 circumstances to be considered by the sentencing court or jury
12 pursuant to the provisions of Section 31-20A-2 NMSA 1978 are
13 limited to the following:

14 A. the victim was a peace officer who was acting in
15 the lawful discharge of an official duty when he was murdered;

16 B. the murder was committed with intent to kill in
17 the commission of or attempt to commit [~~kidnaping~~] kidnapping,
18 criminal sexual contact of a minor, [~~or~~] criminal sexual
19 penetration, shooting at a dwelling or occupied building,
20 shooting at or from a motor vehicle or any other inherently
21 dangerous felony;

22 C. the murder was committed with the intent to kill
23 by the defendant while attempting to escape from a penal
24 institution of New Mexico;

25 D. while incarcerated in a penal institution in New

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1 Mexico, the defendant, with the intent to kill, murdered a
2 person who was at the time incarcerated in or lawfully on the
3 premises of a penal institution in New Mexico. As used in this
4 subsection, "penal institution" includes facilities under the
5 jurisdiction of the corrections [~~and criminal rehabilitation~~]
6 department and county and municipal jails;

7 E. while incarcerated in a penal institution in New
8 Mexico, the defendant, with the intent to kill, murdered an
9 employee of the corrections [~~and criminal rehabilitation~~]
10 department;

11 F. the capital felony was committed for hire; [~~and~~]

12 G. the capital felony was murder of a witness to a
13 crime or any person likely to become a witness to a crime, for
14 the purpose of preventing report of the crime, arrest for the
15 crime or testimony in any criminal proceeding or for retaliation
16 for the victim having testified in any criminal proceeding;

17 H. the capital felony was committed by a person
18 previously convicted of a felony and under sentence of
19 imprisonment, or placed on felony probation;

20 I. the defendant was previously convicted of another
21 capital felony or of a felony involving the use or attempted use
22 of violence against a person;

23 J. the defendant knowingly created a great risk of
24 death to many persons or committed multiple first degree
25 murders;

